

## Message Text

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ACTION L-03

INFO OCT-01 EUR-25 EA-11 IO-12 ADP-00 CIAE-00 DODE-00

PM-09 H-02 INR-10 NSAE-00 NSC-10 PA-03 RSC-01 PRS-01

SS-15 USIA-12 AEC-11 ACDA-19 GAC-01 RSR-01 EB-11

SCI-06 CEQ-02 COA-02 /168 W  
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P R 101520 Z MAY 73

FM AMEMBASSY THE HAGUE

TO SECSTATE WASHDC PRIORITY 1275

INFO AMEMBASSY CANBERRA

AMEMBASSY PARIS

AMEMBASSY WELLINGTON

USMISSION USUN NEW YORK

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E. O. 11652: N/A

TAGS: ICJ (INTL COURT OF JUSTICE), FR, AS, NZ

SUBJECT: ICJ CASE ON FRENCH NUCLEAR TESTING

REF: (A) STATE 085584 (B) CANBERRA 2580

1. SUMMARY: AUSTRALIA AND NEW ZEALAND FILED APPLICATIONS WITH ICJ LATE MAY 9 REQUESTING COURT HEAR CASE AGAINST FRENCH ATOMIC TESTS IN PACIFIC. AUSTRALIA ALSO FILED REQUEST FOR PROVISIONAL MEASURES OF PROTECTION. NEW ZEALAND WILL FILE ON MAY 11 OR 14. COURT COULD CONSIDER MEASURES OF PROTECTION QUESTION LATE NEXT WEEK. COURT SOURCE EXPECTS FRENCH WILL APPEAR TO CONTEST ICJ JURISDICTION. END SUMMARY.

2. AUSTRALIA AND NEW ZEALAND FILED APPLICATIONS ASKING ICJ HEAR CASE AGAINST FRENCH ATOMIC TESTING LATE MAY 9. COURT HAS NOT YET PUBLISHED APPLICATIONS BUT AUSTRALIAN EMBASSY HAS MADE COPY AVAILABLE (NEW ZEALAND EMBASSY HAS LIMITED OFFICIAL USE

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NO COPY). IT IS 17 PAGE DOCUMENT WITH 16 ANNEXES. FIRST PORTION OF APPLICATION PROVIDES HISTORICAL BACKGROUND OF FRENCH ATOMIC TESTS SINCE THEIR INCEPTION AND DOCUMENTS THIS PRESENTATION WITH COMMUNICATIONS EXCHANGED BY AUSTRALIAN AND FRENCH GOVTS ON TESTING SINCE 1963. SECOND SECTION OF AUSTRALIAN APPLICATION IS DETAILED EXAMINATION OF SUBSTANTIVE ELEMENTS IN AUSTRALIAN CASE WITH A GENERAL RUNDOWN ON EFFECTS OF NUCLEAR FALLOUT. KEY PARAGRAPHS IN FIRST PORTION OF AUSTRALIAN APPLICATION ARE 19 AND 20. BEGIN TEXT: "19. THE AUSTRALIAN GOVERNMENT WILL SEEK A DECLARATION THAT THE HOLDING OF FURTHER ATMOSPHERIC TESTS BY THE FRENCH GOVERNMENT IN THE PACIFIC OCEAN IS NOT IN ACCORDANCE WITH INTERNATIONAL LAW AND INVOLVES AN INFRINGEMENT OF THE RIGHTS OF AUSTRALIA. THE AUSTRALIAN GOVERNMENT WILL ALSO REQUEST THAT, UNLESS THE FRENCH GOVERNMENT SHOULD GIVE THE COURT AN UNDERTAKING THAT THE FRENCH GOVERNMENT WILL TREAT A DECLARATION BY THE COURT IN THE SENSE JUST STATED AS A SUFFICIENT GROUND FOR DISCONTINUING FURTHER ATMOSPHERIC TESTING, THE COURT SHOULD MAKE AN ORDER CALLING UPON THE FRENCH REPUBLIC TO REFRAIN FROM ANY FURTHER ATMOSPHERIC TESTS. THE AUSTRALIAN GOVERNMENT IS MINDFUL OF THE NEED TO PROTECT THE INTERESTS OF THE PEOPLES OF THE EXTERNAL TERRITORIES FOR WHICH IT IS RESPONSIBLE AND IN ASKING FOR THE CESSATION OF THE TESTS IT IS SEEKING TO SAFEGUARD THEIR WELFARE NO LESS THAN THAT OF THE PEOPLE OF AUSTRALIA.

"20. BECAUSE THE GOVERNMENT OF AUSTRALIA HAS EVERY REASON TO BELIEVE THAT FURTHER FRENCH TESTS ARE IMMINENT, AND BECAUSE THE FRENCH UNDERTAKING REFERRED TO IN PARAGRAPH 17 ABOVE DOES NOT EXPRESSLY EXTEND TO THE PERIOD OF JUDICIAL PROCEEDINGS, THE GOVERNMENT OF AUSTRALIA WILL IMMEDIATELY BE FILING WITH THE COURT A REQUEST FOR PROVISIONAL MEASURES OF PROTECTION." END TEXT.

3. LEGAL AND JURISDICTIONAL ARGUMENTS CONTAINED PARAS 49 AND 50. BEGIN TEXT: "49. THE AUSTRALIAN GOVERNMENT CONTENTS THAT THE CONDUCT OF THE TESTS AS DESCRIBED ABOVE HAS VIOLATED AND, IF THE TESTS ARE CONTINUED, WILL FURTHER VIOLATE INTERNATIONAL LAW AND THE CHARTER OF THE UNITED NATIONS, AND INTER ALIA, AUSTRALIA'S RIGHTS IN THE FOLLOWING LIMITED OFFICIAL USE

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RESPECTS:

"( I) THE RIGHT OF AUSTRALIA AND ITS PEOPLE, IN COMMON WITH OTHER STATES AND THEIR PEOPLES, TO BE FREE FROM ATMOSPHERIC NUCLEAR WEAPON TESTS BY ANY COUNTRY IS AND WILL BE VIOLATED;

"( II) THE DEPOSIT OF RADIO- ACTIVE FALL- OUT ON THE TERRITORY OF AUSTRALIA AND ITS DISPERSION IN AUSTRALIA'S

AIRSPACE WITHOUT AUSTRALIA' S CONSENT:

"( A) VIOLATES AUSTRALIAN SOVEREIGNTY OVER  
ITS TERRITORY;

"( B) IMPAIRS AUSTRALIA' S INDEPENDENT RIGHT TO  
DETERMINE WHAT ACTS SHALL TAKE PLACE WITHIN ITS TERRITORY  
AND IN PARTICULAR WHETHER AUSTRALIA AND ITS PEOPLE SHALL  
BE EXPOSED TO RADIATION FROM ARTIFICIAL SOURCES  
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\*\*\* Current Handling Restrictions \*\*\* n/a

\*\*\* Current Classification \*\*\* LIMITED OFFICIAL USE

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